

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:	
DAKOTA ACCESS, LLC	DOCKET NO. HLP-2014-0001

**ORDER REQUIRING FILING OF PETITION FOR AMENDMENT OF PIPELINE
PERMIT**

(Issued September 6, 2019)

PROCEDURAL BACKGROUND

On March 10, 2016, the Utilities Board (Board) issued an order granting a permit for Dakota Access LLC (Dakota Access) to construct, operate, and maintain a crude oil pipeline across the state of Iowa. On April 8, 2016, the Board issued Permit No. N0042 to Dakota Access. The Board's March 10, 2016 order granting the permit to Dakota Access was appealed to the Iowa Supreme Court, and the Court issued a decision affirming the Board's order. Puntenney, et al. v. Iowa Utilities Board, 928 NW 2d 829 (Iowa 2019).

On June 12, 2019, Dakota Access filed with the Board notice of certain improvements that Dakota Access intends to make to the Dakota Access Pipeline (DAPL) pumping station located in Cambridge, Iowa. In the filing, Dakota Access stated that the improvements are being made in connection with capacity optimization efforts to address a growing demand for crude oil transportation services. Dakota Access also stated that the filing was a courtesy notice even

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though, in Dakota Access' opinion, the improvements to the pumping station did not require notice to the Board or the filing of a petition for amendment of the permit.

On June 13, 2019, Bold Iowa filed a response to the filing by Dakota Access. In the response, Bold Iowa raised certain questions about the proposed improvements described by Dakota Access and requested the Board conduct a hearing in Story County, Iowa, to address the improvements.

On June 21, 2019, the Board issued an order requesting additional information from Dakota Access about the increased flow of oil through the pipeline. In the order, the Board set a date for responses to the notice filed by Dakota Access. On July 12, 2019, Dakota Access filed the additional information requested by the Board.

Responses to the June 12, 2019 notice have been filed by: Ed Fallon for Bold Iowa, Kathy Byrnes, Bret Scofield, Peter Clay, Dianne Post, Kat Haber, Linda Sorenson, Shari Hrdina, Keith Puntenney, Sierra Club Iowa Chapter (Sierra Club), Sylvia Spalding, and Kristin Jean Frish.

DAKOTA ACCESS INFORMATION

In the filing, Dakota Access stated that the improvements to the DAPL system will add pumping capacity that will increase the current average capacity of the pipeline above 570,000 barrels per day. Dakota Access explained that new and existing shippers committed to additional volumes through participation in the 2018 Open Season and the amounts exceed the current capacity of the system. According to Dakota Access, the additional pumping capacity will allow Dakota

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Access to meet the growing demand from shippers without the need to install new pipelines.

Dakota Access stated that the improvements in Iowa are limited to the Cambridge pumping station and will not involve any extension or relocation of the pipeline, nor any work on the mainline pipeline itself. Dakota Access stated that the three pumps currently located at the pumping station will be replaced with three higher flow-rate capacity pumps and, subsequently, a fourth and fifth pump and motor will be added at the pumping station. Dakota Access stated that the improvements will not require any change or additional acquisition of rights or interests in real property at the existing Cambridge pumping station. The increase in flow will not require or result in an increase in maximum operating pressure.

In response to the June 21, 2019 order, Dakota Access stated that the exact dates of the upgrades have not been established. Dakota Access stated that providing the dates would only aid those wishing to disrupt the work on the pumping station. Dakota Access stated that the improvements will allow up to 1,100,000 barrels per day to be transported through the pipeline. Dakota Access stated that the increase in flow through the pipeline will not impact the amount of insurance coverage for the pipeline and Dakota Access has discussed the increase in flow with the insurance carriers. Dakota Access stated that it will be required to file an update to the Facilities Response Plan with the Pipeline and Hazardous Materials Safety

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Administration (PHMSA) within 30 days of the additional capacity being placed into service.

Dakota Access stated that an amendment to the pipeline permit is not required for the improvements. Dakota Access pointed out that Board rules at 13.9(1) establish when an amendment to a pipeline permit is required and paragraphs 13.9(1)(a)-(d) are not applicable. Dakota Access argued that paragraph 13.9(1)(e) requires an amendment when there is a modification of any condition or limitation placed on the construction or operation of the pipeline in the final order granting the permit, and the Board's March 10, 2016 order does not place a condition or limitation on the volume of crude oil to be transported.

RESPONSES TO THE NOTICE

Responses to the notice filed by Dakota Access regarding the improvements at the Cambridge pumping station and the increased flow of oil raised issues involving the following: 1) the necessary participation of landowners and other Iowans in reviewing the improvements; 2) the effect of the additional oil being transported on climate change, whether there is an increased likelihood of a spill; 3) the addition of an additive to the oil to aid in the increased flow; 4) the need to focus on renewable energy; 5) whether there is an increased risk from a spill involving the increased flow; and 6) other concerns about an increase in the amount of oil being transported through the pipeline.

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In its response, Sierra Club stated that the increase in the amount of oil to be transported above 570,000 barrels per day was not addressed at the hearing. Sierra Club stated that, although the maximum volume of 570,000 barrels per day was not an express condition or limitation of the permit, the record clearly shows that the permit was based on that limitation. Sierra Club pointed out that Dakota Access has filed a petition with the Illinois Commerce Commission for approval to install additional pumping stations and upgrades to accommodate the increase in volume on the pipeline. Sierra Club attached the Illinois filings as an exhibit. Sierra Club stated that Dakota Access did not address rule 13.9 in its notice, and the rule provides a procedure for an amendment to a pipeline. Sierra Club pointed to the testimony of Damon Rahbar-Daniels in Exhibit DRD Direct, p. 4, that the initial planned transport capacity of the pipeline is approximately 450,000 barrels per day and that Dakota Access anticipated that expansion of the capacity up to approximately 570,000 barrels per day after discussions with market participants. Mr. Rahbar-Daniels' testimony was cited in the March 10, 2016 order.

Sierra Club argued that the Board set the parameters of the capacity of the pipeline on page 5 of the March 10, 2016 order where the Board stated that the pipeline would have a capacity of 450,000 barrels per day, which could be increased to 570,000 barrels per day. Sierra Club argued that the amendment rules in 199 IAC 13.9 apply to the increase in capacity. Sierra Club attached as an exhibit to its response the opinion of Dr. Mehrooz Zamanzadeh about the increased pressure from

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the additional volume flowing through the pipeline. Sierra Club also suggested that it is important for the Board to understand the composition of the drag-reducing agent and how it affects the volatility and ignition point of the oil.

BOARD ANALYSIS

Once the Board has issued a permit for the construction, operation and maintenance of a hazardous liquid pipeline, the company issued the permit may construct, operate and maintain the pipeline as allowed by the permit. With regard to the permit issued to Dakota Access, the Board issued Permit No. N0042 that granted the right for Dakota Access to construct, operate, and maintain a pipeline in 18 counties across Iowa. The permit was granted for the transportation of crude oil and was made subject to “the provisions of Iowa Code chapter 479B (2014), 199 Iowa Administrative Code chapters 9 and 13, the ‘Final Decision and Order’ issued in this docket and the April 8, 2016, ‘Order Accepting Compliance Filings and Issuing Permit’ issued in this docket.” (Permit No. N0042, issued April 8, 2016).

Board rules establish when a pipeline company is required to give notice of a change that affects the pipeline. 199 IAC 13.18. The Board agrees with Dakota Access that neither the improvements in the pumping station nor the increase in flow of oil are reportable changes under the Board’s rules.

Paragraphs 13.9(1)(a)-(e) establish what circumstances in the operation, location, or other activity require a pipeline company to file a petition for an amendment to a permit. The Board agrees with Dakota Access that the

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circumstances described in paragraphs 13.9(1)(a)-(d) do not apply to the planned improvements at the pumping station and the increased flow of oil.

However, the Board disagrees with the conclusion that the improvements and increased flow are not a condition and limitation of the permit that require an amendment. 199 IAC 13.9(1)(e). The permit is conditioned and limited by the March 10, 2016 order. In that order, the Board describes the pipeline as a pipeline that will have a capacity of approximately 450,000 barrels per day which “can be increased to 570,000 barrels per day.” Docket No. HLP-2014-0001, Dakota Access, LLC, “Final Decision and Order,” issued March 10, 2016. (Dakota Access Exh. DRD Direct at 4).

The March 10, 2016 order does not address in detail the amount of oil that is expected to be transported through the pipeline; however, it is clear from the evidence presented by Dakota Access in support of the pipeline that Dakota Access represented to the Board and the other parties that the pipeline would transport initially 450,000 barrels per day and could transport up to 570,000 barrels per day. As cited by the March 10, 2016 order, Dakota Access witness Damon Rahbar-Daniels testified in prepared direct testimony that the initial planned transport capacity of the pipeline is approximately 450,000 barrels per day and that Dakota Access “anticipates expansion of the Project up to approximately 570,000 barrels per day.” Dakota Access Exh. DRD Direct at 4. The cited testimony was in response to the question, “What will be the total capacity of the Dakota Access pipeline?”

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Mr. Rahbar-Daniels testified further that shippers have committed capacity rights equal to 90 percent of the total current anticipated system capacity of approximately 450,000 barrels per day. Id. at 6. Mr. Rahbar-Daniels testified further that the shippers have made substantial financial commitments to receive transportation service from Dakota Access “within the entirety of the committed capacity on Dakota Access’s system at the currently system capacity of approximately 450,000 bpd (barrels per day).” Id. at 7.

Not only did Mr. Rahbar-Daniels testify that the anticipated total capacity of the pipeline would be 570,000 barrels per day in prepared testimony, he also testified to this total anticipated capacity at the hearing under cross-examination. (Tr. 40). Mr. Rahbar-Daniels also testified on cross-examination that the Dakota Access capacity into Patoka, Illinois, is approximately 450,000 barrels per day. (Tr. 126). In response to a question from Board Member Jacobs about some inconsistency in a filing at the Federal Energy Regulatory Commission (FERC), Mr. Rahbar-Daniels testified that the Board was considering 450,000 barrels per day and not the 320,000 barrels per day originally in a FERC filing. (Tr. 173). Finally, Dakota Access witness Elaine Kub also testified on cross-examination that the pipeline could carry as high as 570,000 barrels per day. (Tr. 353).

Based upon the evidence in the record as presented by Dakota Access, the Board was considering a pipeline that would transport up to 570,000 barrels per day of crude oil. The fact that the pipeline approved by the Board in Docket No. HLP-

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2014-0001 was a pipeline designed to transport up to 570,000 barrels per day is supported by the flings that Dakota Access is making in Illinois (See: Sierra Club response to notice filed July 2, 2019) and North Dakota, Docket No. PU-19-204, for approval of construction of additional pumping stations and pipelines for the DAPL to be able to transport the 1,100,000 barrels per day. New facilities in those two states would not be necessary if the Dakota Access pipeline was proposed and originally constructed as a pipeline that could transport up to 1,100,000 barrels of crude oil per day.

In a similar docket addressing the need for a permit for a natural gas pipeline, the Board required an amendment to a permit where the only change being proposed was the addition of natural gas to a pipeline approved to transport digester gas. Docket Nos. P-0867, WRU-2013-0017-3862, In re: Waterloo Gas Transport, LLC, “Order Granting Waiver, Petition for Amended Pipeline Permit, and Requiring Filing of Letter of Credit,” issued August 9, 2013. In that docket, the pipeline company filed for a petition for amendment of a pipeline permit to transport digester gas to allow for the mixing of natural gas with the digester gas. The company stated that no additional pipeline or structures are proposed to be constructed, except those facilities required to accept the natural gas. Id.

In the order, the Board cited to 199 IAC 10.9(1)(e) which requires an amendment to a pipeline permit if there is a modification to the pipeline or any condition or limitation on the construction or operation of the pipeline in the final

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order. This provision has the same language as 199 IAC 13.9(1)(e) for hazardous liquid pipelines. In the Waterloo case, the final order stated that the pipeline was designed and would operate to transport digester gas. Id. The Board found that the mixing of natural gas with the digester gas was a modification of a condition of the permit and required an amendment. The Board held since there would be no change in the pipeline location, construction, operation, or safety standard that the location and design exhibits typically required with a petition were not required to be filed. The Board also granted the pipeline company's request for a waiver of the requirements for filing a complete petition and a hearing. Id. Although not exactly on point, the Waterloo order shows the procedure the Board has followed when a condition or limitation in a final order is being proposed.

The Board has researched other amendments to hazardous liquid pipeline permits and has found no other amendments that involve increased capacity. Except for the Waterloo docket discussed above, the interpretation of the requirements in 199 IAC 13.9(1)(e) modification that did not involve a relocation or uprating of the pipeline has not been addressed. This situation regarding a hazardous liquid pipeline appears to be a case of first impression before the Board.

As a case of first impression, the Board must rely upon its understanding of the March 10, 2016 order and the evidence in the record upon which that order was based. That review has led the Board to determine that increasing the flow of oil above the 570,000 barrels per day as presented by Dakota Access in the evidentiary

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record, to 1,100,000 barrels per day requires Dakota Access to file a petition for amendment of the permit. The Board has determined that 570,000 barrels per day was understood to be a limitation of the operation of the pipeline.

The Board understands that Exhibits C and F to the petition include the language that the pipeline is designed to carry 450,000 barrels per day and up to 570,000 barrels per day “or more;” however, the Board did not reflect the language “or more” in its order and an increase above 570,000 barrels per day is not addressed in Dakota Access’ witnesses’ testimony.

The Board’s determination is also consistent with the fact that Dakota Access has filed pleadings in Illinois and North Dakota to construct additional facilities, including pumping stations and additional pipelines, for the pipeline to have the capability to transport the additional capacity. Since Dakota Access must build additional facilities in other states and modify the pumping station in Cambridge, Iowa to transport the increased flow of oil, it is evident the existing pipeline was not designed, constructed, or approved to carry 1,100,000 barrels per day.

PROCEDURAL REQUIREMENTS

Subrule 13.9(2) requires that the petition for an amendment of the permit shall include the docket number and issue date of the permit and shall clearly state the purpose of the petition for amendment. If the petition is for construction of additional pipeline facilities, the same exhibits as required for the petition shall be filed with the

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petition. The subrule also requires that the same procedures for a permit are to be followed, including a hearing.

Even though subrule 13.9(2) requires for an amendment the same exhibits be filed as are required for a permit, in this instance the petition may only need to reference exhibits where the information will be changed as a result of the improvements. Information about the Cambridge pumping station improvements will be required. In addition, Dakota Access should file information as part of Exhibit F addressing the following issues:

1. Provide a description of the improvements proposed for the Cambridge pumping station and any additional interests in land that will be required to make those improvements;
2. Provide expert explanation of the effect adding the additive to the oil will have on the longevity of the pipeline components and whether the additive will increase the risk of a spill or other incident on the pipeline;
3. Provide expert explanation of whether the increased flow will increase the amount of oil that will be released if a spill occurs;
4. Describe any additional requirements that the increase in the flow of oil to 1,100,000 barrels per day will have at the DAPL Control Center.
5. Describe what effect, if any, the increased flow will have on the existing valves along the pipeline;

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6. Describe what additional training or equipment will be required for first responders due to the almost double increase in the flow of oil through the pipeline; and
7. Provide all filings made with PHMSA that Dakota Access has made to the date of this order related to the increase of flow from 570,000 barrels per day to 1,100,000 barrels per day on the Dakota Access pipeline.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Before Dakota Access LLC can increase the flow of oil through the Dakota Access pipeline, Dakota Access LLC is required to file a petition for an amendment to the pipeline permit and obtain approval from the Utilities Board.
2. Dakota Access LLC shall include in the petition for amendment of Permit No. N0042 the information described in this order.

UTILITIES BOARD

/s/ Geri D. Huser

/s/ Nick Wagner

ATTEST:

/s/ Kelsie Vanderflute

Dated at Des Moines, Iowa, this 6th day of September, 2019.